

TECHNICAL ASSISTANCE - TIME OFF

Prepared by the Division of Human Resources in the Department of Personnel & Administration November 5, 2004.

GENERAL INFORMATION

- Employees are expected to request time off as far in advance as possible including stating the general reason for the leave.
- Appointing authorities are responsible for approval of leave including determining the type of leave and proper designation for FMLA purposes, subject to rule and law. Appointing authorities may delegate this responsibility to supervisors or other responsible parties but are still accountable for proper leave management. Individuals approving leave requests are expected to exercise sound judgment and to consider the business needs of the state, as well as the needs of the employee, in determining whether a request will be approved.
- Time off should be requested on the *State of Colorado Leave/Absence Request Authorization* form. This form is also available from supervisors, appointing authorities, and agency human resources offices. It is designed to meet the state's needs while also complying with the requirements under the Family and Medical Leave Act of 1993 (FMLA). Health-related information is confidential and the forms containing such information are to be kept in separate secure files with limited access.
- Permanent employees begin earning annual and sick leave from the first day of employment. Part-time employees and full-time employees who work or are on paid leave less than a full month earn pro-rated amounts of leave. Because the annualized number of hours per month (173.33) is used in calculating pro-rated leave, the amount of pro-rated leave earned does not vary from month to month due to the length of any given month.
- Although part-time employees earn leave on a pro-rated basis, maximum accruals are not pro-rated for part-time.
- Temporary employees do not earn leave unless mandated by law, i.e., jury and possibly family/medical leave.
- In general, paid leave is used before unpaid leave; however, the type and amount of leave depends on the specific circumstances and applicable leave policies.
- The annualized hourly base salary rate is used in calculating the lump sum payments of unused accrued leave upon separation. The annualized hourly rate is calculated by multiplying the monthly base salary rate times 12 and then dividing by 2080. The value of leave does not vary from month to month because of the length of any given month.

- Annual and sick leave for employees working flexible schedules is charged based on the employee's normal working day. For example, an employee who works four 10-hour days is charged 10 hours of sick leave if the employee is ill one of the scheduled workdays.
- An employee may not be required to forfeit sick or annual leave as a disciplinary action.
- Leave is not available for use until the beginning of the next month after it was earned. However, separating employees are compensated for leave earned during their last month of employment if they work or are on **paid** leave through the date of separation.
- Leave earned while an employee is on paid leave for the entire leave earning period is credited when the employee returns to work on a regular basis. While agencies have discretion to define what constitutes a regular basis, an employee should have returned to work for a significant period of time (e.g., 90% of regularly scheduled work for one month, a two-month period, etc.) before leave is credited.
- An employee who is on paid leave may be transferred to a different position. Like other employees who are affected by transfer, the employee is entitled to a position in the same class but does not have rights to the same position. The only exception is that an employee who is on family/medical leave (FML) typically may not be transferred to a different position unless it is virtually identical because the employee has restoration rights to the same or equivalent position upon return.
- An employee may not "borrow" against future leave or "buy back" leave that has already been used. For example, an employee who is involved in an automobile accident and subsequently reimbursed by an insurance company may not have sick leave restored by reimbursing the agency for the value of the leave that was previously used.

ANNUAL LEAVE

Purpose: Paid leave used for personal needs including vacation.

Eligibility: Permanent employees.

Approval: Advance approval by the supervisor or appointing authority is required. However, an appointing authority has discretion to allow employees to use annual leave that was not approved in advance or to charge leave-without-pay. The appointing authority has discretion to determine periods when annual leave will not be granted or when it must be taken. Such policies should be communicated to all affected employees. Exceptions are when denial of annual leave does not allow an employee a reasonable opportunity to use leave before it is subject to forfeiture at the end of a fiscal year. In addition, employees who are notified of layoff cannot be required to use annual leave during the notice period. In some situations involving other types of leave, an employee may be required to use annual leave in accordance with Director's Administrative Procedures. A common cause is when sick leave has been exhausted and the employee is completing the 30-day waiting period for short-term disability benefits. An employee is also required to use all accrued leave

before being placed on leave-without-pay when family/medical leave is involved so, for example, an employee who is adopting a child would be required to exhaust all annual leave before being placed on leave-without-pay.

Amount:

Years of Service	Hours/Month (for full-time employees)	Maximum Accrual That May Be Compensated Upon Separation or Carried Into New Fiscal Year
1st through 5 th	8 hours (1 day)	192 hours (24 days)
6th through 10 th	10 hours (1¼ days)	240 hours (30 days)
11th through 15 th	12 hours (1½ days)	288 hours (36 days)
16th on	14 hours (1¾ days)	336 hours (42 days)

Note: Part-time employees who work regular, non-fluctuating schedules earn a pro-rated amount of leave based on their regular work schedules. Leave for part-time employees working irregular, fluctuating schedules and full-time employee who work or are on paid leave less than a full month is calculated as follows:

$(173.33 - \text{hours LWOP}) \div 173.33 = \% \times \text{employee's earning rate} = \text{amount of leave earned.}$

Any accrued annual leave over the maximum accrual rate at the end of a fiscal year is forfeited on July 1. Upon separation, unused accrued annual leave is paid out, subject to the maximum accrual rate. An employee may not be paid for accrued unused annual leave except in separation situations. Leave must be transferred to the new agency if an employee promotes, transfers, or demotes.

A returning employee's annual leave earning rate is restored if the employee is eligible for reinstatement or is reemployed. If a retiree accepts a temporary position, leave is not earned and previous leave earning rates do not apply. If a retiree returns to a permanent part-time position, the annual leave earning rate is restored and leave is earned on a pro-rated basis.

Part-time employees advance to the next higher annual leave earning rate based strictly on calendar years of service. For example, an employee who works 40% would earn 40% of 10 hours (4 hours) of annual leave beginning with the sixth year of service. Although leave earnings are pro-rated for part-time, leave maximum accruals are not pro-rated for part-time.

Employees who enter or are brought into the state personnel system earn annual leave based on the number of years of continuous state service (both in the personnel system and other state systems), regardless of the amount of leave earned while outside the personnel system. The employee's maximum accrual rate cannot exceed that of an employee in the state personnel system with the same number of years of service. There cannot be any break in service in order for the employee to receive credit for the non-classified employment. For example, an employee who enters the personnel system with seven years of state service outside the state personnel system would earn 10 hours of annual leave per month (240 hours maximum accrual), even if the employee had been earning 14 hours leave per month in the other state system. All leave that the employee earned as a state employee in the other system is transferred to the personnel system if there has not been a break in service. However, the employee loses any leave above the employee's maximum accrual

rate as of the following July 1. This also applies to former personnel system employees who accept a position outside the state personnel system at the request of the Governor or other elected or appointed official and subsequently return to the state personnel system service. For example, an employee with two years of service in the state personnel system who accepted a non-classified position for 10 years and subsequently returns to the state personnel system without a break in service would earn 12 hours of annual leave per month (288 maximum accrual) because the employee is credited with 12 years of total state service.

Leave is not available for use until the beginning of the next month after it was earned except separating employees are compensated for leave earned during their last month of employment if they work or are on paid leave through the date of separation. Employees who work or are on paid leave the entire month earn the full amount of annual leave. Leave is prorated when an employee works or is on paid leave part of the month and either terminates in the middle of the month or is on leave-without-pay for part of the month. With the exception of voluntary furlough, annual leave is not earned while an employee is on leave-without-pay.

SICK LEAVE

Purpose: Paid leave used for health needs including diagnostic and preventative examinations, treatment, and recovery, e.g., illness, injury, dental, optical, auditory, mental, substance abuse treatment. The temporary physical disability caused by pregnancy and childbirth is also covered by sick leave (excludes bonding).

Eligibility: Permanent employees. Sick leave can also be used for the health needs of immediate family members. A family member is a parent (biological or *in loco parentis*), child under 18 years, adult child incapable of self-care, spouse, legal dependent, or person in the household for whom the employee is the primary caregiver. *In loco parentis* is defined as an individual who filled the role of a parent, including ongoing daily care and financial support. An employee may be required to provide documentation of the familial relationship.

Approval: Approval of the supervisor or appointing authority is required. Advance approval should be obtained to the extent possible.

The *State of Colorado Medical Certificate* form, completed by a health care provider, is required when the absence is more than three consecutive full working days or the use of sick leave will be denied in accordance with statute. The form may be required for absences less than three days. This form is used for both personal and family conditions.

The *State of Colorado Fitness To Return* form, completed by a health care provider, is required for absences over 30 calendar days due to an employee's health condition. It may be required for absences of 30 days or fewer based on the nature of the condition in relation to the job. This form cannot be required when leave is taken for a family member's condition.

Amount: Full-time employees earn 6.66 hours per month. Part-time employees who work regular, non-fluctuating schedules earn a pro-rated amount of leave based on their regular work schedules.

Leave for part-time employees working irregular, fluctuating schedules and full-time employee who work or are on paid leave less than a full month is calculated as follows:

$(173.33 - \text{hours LWOP}) \div 173.33 = \% \times \text{employee's earning rate} = \text{amount of leave earned.}$

C.R.S. 24-50-104 provides that employees shall be credited with no more than 80 hours sick leave per fiscal year. The 6.66 hours sick leave that a full-time employee earns each month equates to 79.92 hours in a fiscal year. There is no provision that allows crediting an additional .08 hours to employees' sick leave balances at the end of each fiscal year to equal 80 hours.

Employees hired before July 1, 1988, have individual maximum accrual rates equal to the sick leave balance on 7/1/88 plus 360 hours (45 days). Employees hired on July 1, 1988, and after have a maximum accrual rate of 360 hours (45 days). This applies to both full-time and part-time employees. Although leave earnings are pro-rated for part-time, leave maximum accruals are not pro-rated for part-time.

Any accrued sick leave over the maximum accrual rate at the end of a fiscal year is converted to annual leave. The conversion rate is one hour of annual leave for every five hours of over-accrued sick leave, up to 16 hours of annual leave. The following sequence of events is used in converting sick leave to annual leave:

6/30 Sick leave above an employee's maximum accrual rate is converted to annual leave.

7/1 1st - All non-converted annual leave above an employee's maximum annual leave carryover rate is forfeited.

2nd - Converted sick leave hours are credited to the employee's annual leave balance and any remaining sick leave (non-converted) over the employee's maximum accrual rate is forfeited.

A special program that is in effect from July 1, 2000, through June 30, 2005, allows employees hired before July 1, 1988 to convert all or a portion of accrued sick leave in excess of 360 hours to salary, for PERA purposes only, at a 15 percent payment rate. The employee must be eligible for retirement at the time of conversion. Additional information about this program may be found on the Internet.

All unused sick leave is forfeited upon separation from the personnel system unless the employee is eligible for an immediate full or reduced retirement. Immediate eligibility means having met PERA's requirements as of the separation date (last day employed or on the payroll). If an employee is eligible for immediate retirement at separation, such employee is paid one-quarter of unused accrued sick leave, subject to the maximum accrual rate. PERA is responsible for determining eligibility for retirement, so questions about eligibility should be directed to PERA. For example, a 49-year-old employee with a March 15th birth date separates on February 28th with 30 years of service. Because the employee has not met PERA's requirements to be eligible for immediate retirement on February 28, the employee is ineligible for the one-quarter sick leave payout. In another example, if an employee separates on March 1 and meets PERA's requirements

for retirement, the employee is eligible for the one-quarter sick leave payout regardless of whether or not the employee applies for retirement benefits. Under no circumstances is an employee eligible for the sick leave pay-out without separation.

If an employee exhausts sick leave and is unable to return to work, annual leave is used. If the employee is still unable to return after exhausting annual leave and no other leave or benefit is applicable (e.g., FMLA, short-term disability leave, ADA), the employee may be discharged, following a pre-termination exchange of information as provided in Board Rule R-7-1. The appointing authority also has discretion to grant leave-without-pay.

A returning employee's sick leave balance and maximum accrual rate are restored if the employee is eligible for reemployment or reinstatement, including certified employees who were discharged for exhaustion of paid leave. A retiree, who accepts a temporary position, does not earn sick leave. A retiree who returns to a permanent part-time position is treated like any other part-time employee new to the state personnel system and has a maximum accrual rate of 360 hours.

An employee whose individual sick leave balance is above 360 hours is permitted to accrue sick leave up to this individual balance again if the use of sick leave results in the employee falling below the maximum sick leave balance. For example, an employee with an individual sick leave balance of 900 hours is permitted to again accrue up to 900 hours if the employee suffers an illness or injury that results in the use of 800 hours sick leave. This does not apply to a retiree who returns to state service after being paid for one-fourth of unused, accrued sick leave. Because the retiree has already been paid for sick leave based on the employee's previous individual sick leave balance, the employee is limited to the 360 hours sick leave maximum upon return to state employment.

Employees, who enter or are brought into the state personnel system from other state government service, transfer sick leave earned in the other system if there has not been any break in service. If there is a break in service of even one day, the employee may only reinstate the sick leave balance at the time the employee left the state personnel system. The maximum accrual rate is 360 hours (45 days) unless the employee was in the state personnel system on July 1, 1988, and had an individual maximum accrual rate established for sick leave before leaving the state personnel system. For example, an employee with two years of state personnel system service who accepted a non-classified position before July 1, 1988 and subsequently returns to the state personnel system after 10 years (without a break in service) would have a maximum accrual rate of 360 hours.

An employee who becomes ill while on vacation may request that annual leave be changed to sick leave. An appointing authority has discretion to grant this request, subject to all applicable sick leave provisions.

Sick leave is only granted for those days that an employee is scheduled to work and is unable to do so. It is not granted for unscheduled work periods (e.g., summer months for 9-month employees who regularly work September through May).

Leave is not available for use until the beginning of the next month after it was earned except separating employees are compensated for leave earned during their last month of employment if

they work or are on paid leave through the date of separation. Employees who work or are on paid leave the entire month earn the full amount of sick leave. Leave is prorated when an employee works or is on paid leave part of the month and either terminates in the middle of the month or is on leave-without-pay for part of the month. With the exception of voluntary furlough, sick leave is not earned while an employee is on leave-without-pay.

An appointing authority has discretion to request a medical certificate for absences of less than three full consecutive working days if abuse or misuse of sick leave is suspected. While agencies are cautioned against establishing blanket policies requiring medical certificates from all employees for one or two-day absences, it is appropriate to request a medical certificate when sick leave abuse or misuse is suspected or for a pattern of suspicious sick leave use (e.g., pattern of illness on Mondays or Fridays). In addition, excessive use of sick leave may be addressed through the corrective and disciplinary action process in certain situations. Because this is a complex area, specific questions concerning potential sick leave abuse should be directed to the Division of Human Resources of the Department of Personnel & Administration or to the agency's legal counsel.

HOLIDAY LEAVE

Purpose: Paid leave used to observe legal holidays.

Eligibility: Permanent full-time employees who work or are on paid leave the scheduled full working day before or the scheduled full working day after a holiday receive a full day of holiday leave even if they are on unpaid status the other days of the month. Employees on voluntary furlough receive holiday leave as though no unpaid absence occurred. Employees who work for agencies that observe alternate holidays forfeit one day of holiday pay if they fail to be in paid status the scheduled full day before or the full day after the alternate holiday. Failure to be in paid status for more than one consecutive full day either before or after a block of alternate holidays results in forfeiture of all of the alternate holidays.

M 12/24	T 12/25	W 12/26	T 12/27	F 12/28
works 8 hours	Holiday	Alt. Holiday	Alt. Holiday	works 4 hours LWOP 4 hours
M 12/31				
LWOP 8 hours				

For employees of agencies observing alternate holiday schedules, these schedules are used in the application of all of the holiday leave provisions. For example, if Presidents' Day is observed in June under an alternate holiday schedule and an employee quits or transfers in April after having worked the statutory holiday but before the date that the holiday is observed by the employer, the employee is not paid holiday leave on separation or transfer for having worked the statutory date. However, an employee who begins work in April is paid for the alternate Presidents' Day holiday when it is observed. An employee who is ill on an alternate holiday is not granted a different holiday on a future date just as an employee who is ill on a statutory holiday (e.g., Christmas) is charged holiday leave for the holiday, not sick leave.

Approval: Ten holidays are granted by statute. These days are Independence Day (July 4th), Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, New Year's Day, Martin Luther King's Birthday, Washington/Lincoln (President's) Day, and Memorial Day. Many departments and institutions of higher education adopt alternative holiday schedules to better fit their operational needs. The Governor, the Colorado General Assembly, or the President of the United States may declare additional legal holidays or special days of observance. In addition, legislation was signed on March 27, 2001, allows executive directors and presidents of higher education institutions to grant a state employee's request to substitute César Chávez Day on March 31 for one of the statutory holidays in the same fiscal year, subject to the provisions of the law. When granting such requests, the department must be open for business and minimally operational on both days and the employee must be able to perform work. For example, a receptionist requests approval to observe César Chávez Day in lieu of Veteran's Day. Because the work unit is not open for business on Veteran's Day, there would be no visitors to receive or calls to direct and the employee would be unable to perform work.

Amount: Up to eight hours per holiday. Holiday leave for part-time employees is prorated. Employees working flex schedules of nine or more hours in a day need to request leave for the extra hours beyond eight or arrange to make up the time during the week of observance. If a holiday falls on a day a flextime employee is not scheduled to work, the employee is granted 8 hours off at a time determined by the appointing authority.

Part-time employees are held to the same standards as full-time employees regarding being in paid status their scheduled day before or after a holiday in order to be eligible for holiday pay. If a holiday falls on a day a part-time employee is not scheduled to work, the employee is granted the prorated hours off at a time determined by the appointing authority or delegee. It is recommended that the holiday leave is taken in the same week as the holiday. For example, a half-time employee with a regular work schedule of ten hours on Wednesdays and Thursdays is eligible for four hours of holiday pay for the Memorial Day holiday because the employee worked the scheduled day before and after the holiday. The appointing authority or delegee has the authority to schedule the four hours of holiday so that the part-time employee is not losing holiday leave but is not gaining an additional four hours of pay. In the example below, the employee is given the benefit of the holiday pay, and the agency is not incurring additional financial liability.

EXAMPLE: .5 Part-time Employee				
M 5/20	T 5/21	W 5/22	T 5/23	F 5/24
unscheduled	works 10 hours	works 10 hours	unscheduled	unscheduled
M 5/27	T 5/28	W 5/29	T 5/30	F 5/31
Holiday—4 hours	works 10 hours	works 6 hours	unscheduled	unscheduled

In the above example, if Monday was one of the scheduled 10-hour workdays rather than Wednesday, the appointing authority could allow the employee to take 6 hours of annual leave on the holiday, require the employee to work the other 6 hours during the week of the holiday, or establish some other alternative schedule.

A holiday that falls during a period of disciplinary suspension is counted as one of the days of suspension and the employee is not paid for the holiday.

An employee who wishes to be granted leave for a religious holiday that is not a statutory holiday (e.g., Yom Kippur) may arrange to work one of the statutory holidays in place of the religious holiday if the appointing authority approves. The employee may also request to take annual leave or leave-without-pay.

FUNERAL LEAVE

Purpose: Paid leave used to attend funeral services of family members or others. It does not cover settlement of an estate.

Eligibility: Permanent employees.

Approval: The supervisor or appointing authority must approve the amount of funeral leave based on the relationship to the deceased and the distance and mode of transportation. An appointing authority may approve the entire 40 hours for a close family member even if funeral activities do not require this full amount of time.

Amount: Up to 40 hours per occurrence.

JURY LEAVE

Purpose: Paid leave used when called to jury duty.

Eligibility: Permanent and temporary employees, when required by state law.

Approval: The supervisor or appointing authority will approve the leave. Proof may be required.

Amount: Permanent employees are granted jury leave for the period they are required to serve. Temporary employees are granted up to three working days when jury duty occurs during days they are normally scheduled to work.

Employees are not required to turn jury pay, including mileage and parking allowance, over to the agency in order to receive regular pay.

An employee who is on annual leave when called to jury duty must be granted jury leave for the period of jury service.

Employees working second and third shifts are eligible for jury leave. Statute prohibits an employer from making demands upon any employed juror that will substantially interfere with the effective performance of juror service. Accordingly, second and third shift employees should not be required to work their regular shift after a full day of jury service. The appointing authority determines the policy regarding return to work when early release or partial days of jury service occur.

ADMINISTRATIVE LEAVE

Purpose: Paid leave designed to relieve an employee of official state duties in order to participate in activities determined by the appointing authority to benefit the state. It is not meant to be a substitute for tracking time away from the regular duty station for work activities, e.g., on-the-job training, off-site work meetings, work-related conferences and training. It is also not intended to be a substitute when corrective or disciplinary action is appropriate or to be used in place of other benefits or types of leave (e.g., funeral or sick leave). Prudent use of taxpayer and personal service dollars, as well as the business needs of a department, are factors that an appointing authority considers in determining whether administrative leave will be granted. Any administrative leave granted to a single employee that exceeds 20 consecutive working days must be reported to both the department director and the state personnel director.

It *may* be granted

- to participate in examinations and interviews upon referral for state positions,
- to participate in school or community volunteer activities,
- to attend classes at an educational institution that are directly related to the work,
- as an incentive or supplement for extraordinary or exemplary performance,
- to participate in official activities as an elected officer of an employee organization,
- to certified disaster service volunteers of the American Red Cross during local (up to 5 days per fiscal year) or national emergencies (up to 15 days per fiscal year),
- during a period of investigation into an employee's activities, or
- for any other reason deemed by the appointing authority to be in the best interests of the state. This includes EAP counseling sessions where the granting of such leave may be particularly appropriate when an employee is seeking help with a problem that affects job performance.

Administrative leave may also be granted to non-essential employees under the state's Inclement Weather Policy if a closure of state facilities occurs. Essential employees who are required to work during a closure of state facilities are paid at the regular rate and are not granted a future day of administrative leave. Employees who are already on approved annual, sick, or other type of leave when a closure occurs remain on leave and administrative leave is not substituted for the period of closure. Employees who arrive late to work because of weather conditions when a state facility has

not been closed may be granted administrative leave (typically no more than 2 hours) at the discretion of the appointing authority. The Inclement Weather Policy is printed in the State Employee Handbook.

Administrative leave *must* be granted

- to participate in required hearings or settlement conferences required by the State Personnel Board or State personnel director,
- to testify in an official capacity regarding state business in court or official hearings as required by an appointing authority or subpoena,
- for two hours to participate in general elections (even numbered years) if an employee does not have three hours of unscheduled work time between the hours of 7:00 a.m. and 7:00 p.m.,
- for up to two days in a fiscal year to donate an organ, tissue or bone marrow for transplants.

Eligibility: Permanent employees.

Approval: The appointing authority grants administrative leave.

Amount: At the discretion of the appointing authority unless specified above.

FAMILY/MEDICAL LEAVE

Purpose: Unpaid leave used to provide a guaranteed amount of time, job protection, and continued benefits to eligible employees for the addition of a child or the serious health condition of a parent, child, spouse, or self.

Eligibility: Permanent employees with one year of state service. Temporary employees with one year of state service and who have worked 1250 hours in the 12 months prior to the beginning of the leave. Employees in the reserves or National Guard are entitled to count active military duty absences as time worked to establish eligibility (just as other employees on the payroll, even if on unpaid leave).

Approval: The supervisor, appointing authority or other responsible delegated party must determine employee eligibility and whether each absence is covered at the time any leave is requested. The employee does not have to specifically apply for or mention family/medical leave. The employee cannot waive family/medical leave rights.

Amount: Full-time employees are eligible for up to 520 hours per fiscal year. Part-time employees are eligible for a pro-rated amount. Whether family/medical leave is paid or unpaid depends on the individual circumstances; however, exhaustion of all applicable annual or sick leave is required before being placed on unpaid leave, subject to the provisions of the specific leave. Family/medical leave runs concurrently with all other types of leave except when the employee is using sick or annual leave to be “made whole” while receiving temporary disability payments under worker’s compensation for a work-related illness or injury.

The employee has the right to be restored to an identical position upon return from family/medical

leave. This is different than other types of leave for which an employee is entitled to be restored to a position in the same class but not the identical position. If the employee is unable to return to work at the end of family/medical leave, restoration rights under the federal law no longer apply and regular leave rules are used. This is a unique right for family/medical leave only. In all other cases of leave, the employee only has a right to a position in the same class.

MILITARY TRAINING LEAVE

Purpose: Paid leave used for the annual encampment or equivalent reserve training for members of the National Guard or military reserves as required by state statute.

Eligibility: Permanent employees.

Approval: The supervisor or appointing authority will grant the leave upon presentation of proper military orders.

Amount: Up to 15 working days (120 hours) per calendar year. If an employee is placed in line-of-duty status or similar military-related disability during this time, the employee is considered to be on military leave.

For detailed information, refer to “Technical Assistance on Treatment of Veterans and Active Military in the State Personnel System” on the DHR website.

MILITARY LEAVE

Purpose: Unpaid leave that is used when an employee is called to active military service., as required by federal law. The enlistment may be voluntary and/or for training purposes.

Eligibility: Permanent employees.

Approval: The supervisor or appointing authority will grant the leave upon presentation of proper military orders.

Amount: For the period of service that does not exceed five years, subject to exceptions in federal law. The remainder of the 15 working days of military training leave is granted before an employee is placed on unpaid military leave.

For detailed information, refer to “Technical Assistance on Treatment of Veterans and Active Military in the State Personnel System” on the DHR website.

LEAVE WITHOUT PAY

Purpose: Generally used after other applicable paid leaves are exhausted.

Eligibility: Permanent employees.

Approval: The supervisor or appointing authority approves leave without pay.

Amount: At the discretion of the supervisor or appointing authority, subject to other leave and benefits policies.

The employee must pay both the state and employee portions of the premium to maintain insurance benefits (except when family/medical leave, short-term disability leave, or voluntary furlough leave are involved). Leave-without-pay affects probationary and trial service periods. Anniversary dates and years of service for leave earning purposes are adjusted one month forward for every 173 hours of leave-without-pay (except when the employee is on voluntary furlough leave-without-pay).

If a position is abolished while occupied by an employee on leave-without-pay, the employee is processed under the layoff rules in same manner as if the employee had been at work.

SHORT-TERM DISABILITY LEAVE

Purpose: Unpaid leave used when an employee has applied for or is receiving short-term disability benefits from either the state's or PERA's short-term disability program.

Eligibility: Permanent employees with at least one year of state service who have applied for short-term disability benefits within 30 days of the beginning of the absence or at least 30 days prior to the exhaustion of all sick leave. The employee must notify the agency at the same time the application for benefits is made. A reinstated employee is eligible for short-term disability leave based on the employee's former state service.

Approval: The supervisor or appointing authority grants leave when the employee has applied for or is receiving short-term disability benefits.

Amount: Up to 180 days including the waiting period, paid leave, and while receiving short-term disability benefits.

Note that there is a waiting period of a minimum of 30 days. If the employee has more than 30 days of sick leave, it must be exhausted before benefits begin. If the employee does not have sick leave to cover the waiting period, annual leave is charged. If annual leave is exhausted before the end of the waiting period, the employee is placed on leave-without-pay. Employees are not required to use annual leave beyond the waiting period because doing so will impact STD benefits.

An employee on short-term disability leave does not earn sick and annual leave and anniversary dates and seniority are adjusted in accordance with leave-without-pay provisions.

Employees who are ineligible for short-term disability leave or fail to apply for the short-term disability benefit within the prescribed time may be discharged when sick and annual leave is exhausted and no other leave or benefit is applicable, e.g., FMLA and ADA. However, the

discharged employee may still receive short-term disability benefits. It is important that agencies are timely in providing the application form for benefits and in notifying the employee of the deadline to file in order to be eligible for short-term disability leave.

An employee who is receiving worker's compensation benefits may also apply for short-term disability benefits. Although the short-term disability benefits will be offset by workers' compensation, the employee will be afforded the job protection of short-term disability leave.

MAKE WHOLE (WORK-RELATED ILLNESS OR INJURY)

Purpose: A policy used for employees who have an on-the-job illness/injury that is compensable under worker's compensation. The employee's accrued sick and/or annual leave is used in an amount needed to make up the difference between the temporary disability payment and gross base salary (excludes pay premiums and differentials). The intent is to get as close as possible to the employee's gross base salary but not exceed it.

Eligibility: Permanent employees.

Approval: The supervisor or appointing authority approves. An employee may elect to use compensatory time before being placed on sick and then annual leave. Employees do not have discretion to request that they not be made whole and may not turn over workers' compensation payments to the agency.

Amount: The difference between temporary disability payments and gross base salary as long as the employee is receiving temporary disability payments. Worker's compensation payments are based on an employee's weekly salary so the annualized weekly salary is used. The following formula illustrates the method of calculating the amount of leave that should be charged:

Monthly salary x 12 divided by 52 = weekly salary

Monthly salary x 12 divided by 2080 = hourly salary

Weekly salary – Worker's Compensation Pay = Difference divided by hourly rate = hours of leave that should be charged

When the condition of an eligible employee also qualifies under family/medical leave, the designation should be made but family/medical leave cannot actually run concurrently as long as the employee is being made whole. This is unlike any other form of leave that is counted concurrently with family/medical leave.

An employee who is being made whole for an entire month earns the full amount of sick and annual leave. Leave is pro-rated for an employee who is made whole for part of a month and is on leave-without-pay for the remainder.

VOLUNTARY FURLOUGH LEAVE WITHOUT PAY

Purpose: To prevent the need for position reductions and/or abolishment when an executive director

or president of a higher education institution officially declares a budget deficit in personal services.

Eligibility: Permanent employees.

Approval: The supervisor or appointing authority upon official declaration as described above.

The statutes also allow mandatory furlough to be declared by the Governor and Colorado General Assembly under certain conditions. If a mandatory furlough is ever declared, instructions and guidance will be issued.

Amount: Up to 72 working days in a fiscal year.

Employees earn sick leave, annual leave, and holidays while on voluntary furlough. The state continues to pay the employer's share of the health insurance premium and service dates are not adjusted. An employee who is on voluntary furlough leave-without-pay and experiences a qualifying event under family/medical leave is removed from voluntary furlough and placed on sick and/or annual leave, as appropriate. The employee is removed from voluntary furlough leave because of the requirement that an employee on family/medical leave exhaust all paid leave before being placed on leave-without-pay.

A target furlough savings should be identified before announcing the voluntary furlough and requesting volunteers. The declaration of a budget deficit and announcement of the furlough must identify the voluntary furlough time frame. It is also recommended that the furlough announcement states that the time frame may be extended or shortened based on employee response and meeting targeted savings.

In addition to the declaration, parameters should be defined for furlough approval. For example, an agency may take applications on a "first come, first served" basis or require all interested employees to apply by a certain date and consider all applications at one time. The agency should document and communicate the reasons for which applications will not be approved such as family/medical leave, essential employees, workload issues in a specific unit, etc. A written agreement, signed by the employee and the appointing authority, is required (a sample agreement is attached). Documentation, including written agreements and approved or rejected applications, is kept in the personnel file.

VICTIM PROTECTION LEAVE

Purpose: Unpaid leave for victims of stalking, sexual assault, or domestic abuse or violence to seek a restraining order, obtain medical care or counseling for the employee or the employee's children, secure or seek safe housing, or seek legal assistance and participate in legal proceedings.

- Leave to seek a restraining order still applies even if the order is not granted.
- Securing or seeking safe housing includes, but is not limited to, changing locks, installing alarm systems, moving into a safe house or other alternative housing.
- Seeking legal assistance includes obtaining legal counsel, filing legal documents, meetings with

counsel, preparation for legal proceedings, etc.

Eligibility: Employees with one year of state service. Annual leave and any applicable sick leave must be exhausted. The one year of state service does not need to be consecutive service.

Approval: Approval of the supervisor or appointing authority is required. Documentation of the need for leave may be required.

The type of documentation depends on the reason for the leave. Documentation includes application or a restraining order or receipts for filing fees, police reports, *State of Colorado Medical Certificate* form from a health care provider, letter from a victims assistance organization or legal counsel, court documents, receipts for work done to secure the home, or completion of the *Victim Protection Affidavit* attesting to the reason for the leave.

All documentation in support of victim protection leave is confidential and is to be kept in separate, locked files with limited access. Because documentation may include medical information and the confidentiality standards are similar, storage with employee medical files may be appropriate.

Amount: up to three working days per fiscal year. The amount of leave is prorated for part-time. Appointing authorities have the authority to grant additional leave without pay.

Use of victim protection leave does not shield an employee from an employment action that would have otherwise occurred regardless of the use of the leave. Like other types of non-FMLA leave, restoration is to any position in the same class.

LEAVE SHARING PROGRAM

Purpose: To allow an employee to transfer annual leave to an eligible employee if that employee or an immediate family member is experiencing a catastrophic illness or injury that poses a direct threat to life. Separate guidance is also available on the Internet.

Eligibility: Permanent employees with at least one year of state service who have exhausted all applicable accrued leave. Leave sharing is intended to be a “court of last resort” and is not a substitute for short-term disability, long-term disability, or worker’s compensation benefits.

Approval: The executive director of a department or the president of a college or university. Approval of leave sharing may only be delegated below the executive director/president level with the approval of the state personnel director.

Leave sharing is voluntary and agencies develop their own leave-sharing programs that may include provisions for individual leave donation or donation to a leave bank. Denial of a request for donated leave cannot be grieved or appealed.

The above information is general in nature and every attempt is made to keep this information updated. For

more information, refer to Chapter 5 of the Director's Administrative Procedures, the Colorado State Employee's Handbook, or contact your agency human resources office. Subsequent revisions to rule or law could cause conflicts in this information. In such a situation, the laws and procedures are the official source upon which to base a ruling or interpretation. This document is a guide, not a contract or legal advice.

SAMPLE

(Date)

TO: Employees, Department of XYZ

FROM: Executive Director

SUBJECT: Budget Deficit in Personal Services

The Department of XXX is currently facing a budget deficit in personal services. Options are being explored to address the shortfall while at the same time avoiding the layoff of staff, if possible. In recognition of the budget deficit, all employees are being offered voluntary furlough during this fiscal year. The expected duration of the authorized voluntary furlough period will be XXX months, scheduled to begin XXXX with an end date of June 30, XXXX. Depending on employee response, the duration of the furlough period may be extended or shortened as budget savings are achieved.

Based on initial calculations, the target savings can be achieved if each employee were to take a furlough of XXX days between XXXX and XXXX. The furlough is entirely voluntary and should not be construed as a requirement. Employees are encouraged to consider their own financial circumstances when making the decision whether to apply for voluntary furlough.

Anyone interested in volunteering for furlough should contact the Human Resource Office at 000-123-4567 by XXX (date). Participants will be expected to sign a written agreement detailing their rights and responsibilities during the furlough. Job assignments along with work unit needs will be taken into consideration as furlough requests are approved by appointing authorities. Once the targeted budget savings are achieved, no future furloughs will be approved.

SAMPLE

VOLUNTARY FURLOUGH AGREEMENT

This Voluntary Furlough Agreement is being entered into this ____ day of ___, 20XX between _____ (the "State Agency" or "Institution") and (employee's name) "_____" .

RECITALS

WHEREAS, the _____ is an agency of the State of Colorado and is facing a serious budget deficit, and

WHEREAS, _____ is an employee of the State Agency and in recognition of the budget deficit has requested a voluntary furlough,

Both parties agree to the following:

OBLIGATIONS OF THE EMPLOYEE

1. _____ agrees to take a total of _____ hours, not to exceed 72 days per fiscal year, under voluntary furlough.
2. The employee understands that the furlough hours will be scheduled based on a mutually agreed upon schedule. The agreed upon schedule is _____ (e.g., eight hours every other Monday, four hours every Friday), for _____ (weeks, months, etc.).
3. The furlough will begin the week of _____ and end the week of _____.
4. The employee understands that his/her monthly salary will be reduced by the amount of voluntary furlough leave taken and paid leave will not be charged.
5. The employee understands that there is a potential impact on future PERA benefits due to the salary reduction from voluntary leave without pay. It is the employee's responsibility to discuss potential retirement impact with PERA.

OBLIGATIONS OF THE STATE AGENCY

6. The State Agency agrees to accept _____'s voluntary furlough.
7. The State Agency agrees that the approved voluntary furlough period will be effective _____ and will terminate no later than _____ and further agrees that the voluntary

furlough may be terminated earlier if budget savings are met.

8. The State Agency agrees that there will be no affect on the terms and conditions of the employee's duty assignment (shift, location, duties, assigned projects, schedules) as a result of requesting voluntary furlough. However, the appointing authority retains the right to change the duty assignment (shift, location, duties, assigned projects, schedules) based on business needs.

9. The State Agency understands that there will be no adverse impact on health, dental, life, and other insurance benefits.

10. The State Agency understands that the employee will continue to earn leave at the regular rate during the furlough as though no furlough was taken. Voluntary furlough will not impact the service date nor delay a change to an employee's leave accrual earning rate. Furlough hours taken the day before or the day after a scheduled holiday do not affect the holiday pay.

GENERAL PROVISIONS

11. The parties have discussed, understand, acknowledge, and agree that this Agreement reflects all terms and conditions of the voluntary furlough. Any changes to this agreement must be written, signed by both parties, and attached to this agreement or a new Voluntary Furlough Agreement developed.

12. Both parties have voluntarily entered into the agreement. Terms are determined in agreement by both parties.

13. Either party may terminate the agreement at any time. Termination of this agreement must be in writing. There will be no retaliation for withdrawing from the agreement.

14. Both parties understand that if a qualifying condition under the Family and Medical Leave Act occurs while a voluntary furlough agreement is in place, the agreement shall be terminated immediately.

SIGNATURES

Employee

Date

Appointing Authority

Date

Original filed in the official personnel file
Copies provided to the employee and supervisor